

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Marco Steiger
Application No. 09/917,998	Filing Date: August 1, 2002
Title of Application:	Material Removing Tool
Confirmation No.	Art Unit: 3723
Examiner	Shantese L. McDonald

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

***Petition to Withdraw Holding of
Abandonment Pursuant to 37 CFR 1.181(a)***

Dear Sir:

On or about August 30, 2006, Applicant's representative received a Notice of Abandonment from the USPTO for the above-captioned application and was informed that the previously filed Response and Request for Extension (sent on December 30, 2005) had been sent with respect to the wrong case and would require a petition to withdraw the holding of abandonment.

Applicant, through its duly appointed Attorneys, hereby petition the Commissioner to withdraw this holding of abandonment on grounds that applicant's previously filed Response to the Office Action and Credit Card Payment Form did in fact list the correct case and authorized payment of the fee required for an extension of time.

The Office Action mailed on July 1, 2005 set a shortened statutory period for reply of three (3) months from the mailing date of the Office Action. On December 30, 2005, Applicant mailed a Petition for Time Extension, a Response to the above-mentioned Office Action, and Credit Card Payment Form PT-2038

authorizing payment of the extension fee. Both the coversheet attached to this correspondence and the Reply Post Card that was enclosed listed the incorrect application number. However, the Response to the Office Action and the Credit Card Payment Form PT-2038 referenced the appropriate, above-captioned application number (see copy of documents as mailed attached hereto).

Applicant contends that an extension of time should have been granted despite the erroneously listed application number because Applicant's correspondence qualified as a constructive petition under 37 CFR 1.136(a)(3) for two reasons. First, the Credit Card Payment Form listed the correct application number. Second, the Response to the Office Action listed the correct application number, specifically requested an extension of time, and authorized payment through Deposit Account No. 19-4516.

According to 37 CFR 1.136(a)(3):

A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission. (Emphasis added).

Applicant contends that pursuant to the italicized portion of 37 CFR 1.136(a)(3), quoted above, the extension of time to respond should have been

granted. The following text is taken from page one (1) of the Response to the Official Action:

Enclosed herewith is a Request for a three-month extension of time to respond to the afore-mentioned outstanding Office Action and a check for the appropriate fee. Applicant believes that no further fee is due in connection with the filing of this Response. However, if any further fee is due please charge Deposit Account No. 19-4516.

Thus, because Applicant submitted a Credit Card Payment Form which listed the proper application number, according to the last sentence of 37 CFR 1.136(a)(3), the submission should have been considered a constructive petition for an extension of time.

Further, according to the second sentence of 37 CFR 1.136(a)(3), the authorization to charge Deposit Account No. 19-4516 included on the Response to the Official Action should also have been considered a constructive petition for an extension of time.

In light of the above, Applicant respectfully requests that the holding of abandonment be withdrawn and that the Request for Continued Examination be considered by the Examiner.

Applicant believes that no fee is due in connection with this Petition. However, if any fee is due, please charge to Deposit Account No. 19-4516.

Petition to Withdraw Holding of Abandonment
Application No. 09/917,998
Page 4

Respectfully submitted,

/s/

Wesley W. Whitmyer, Jr., Registration No. 33,558
Todd M. Oberdick, Registration No. 44,268
Attorneys for Applicants
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/917,998

07/30/2001

Marco Steiger

G 3752

1503

24126

7590

08/28/2006

ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

RECEIVED
St. Onge Steward Johnston & Reens

AUG 30 2006

W
TMO FILE *03630-70049B*
Noted in 11/14 *and*

EXAMINER

MCDONALD, SHANTESE L

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment

Application No.

09/917,998

Examiner

Shantese L. McDonald

Applicant(s)

STEIGER ET AL.

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 01 July 2005.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☒ A reply was received on 03 January 2006 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

Because the response and request for extension was sent with respect to the wrong case, the applicant will need to petition to revive or withdraw the holding of abandonment.



Joseph J. Hail, III
Supervisory Patent Examiner
Technology Center 3700

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

MODE = MEMORY TRANSMISSION

START=JUN-13 10:44

END=JUN-13 10:48

FILE NO.=746

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
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FAX COVER SHEET

DATE
June 13, 2006

PAGES
19

DELIVER TO
PTO - Examiner Shantese L. McDonald

SSJR File
3630-P0049B

FAX NUMBER
(571) 273-4486

FROM
Beatrice R. Emerson for
Wesley W. Whitmyer, Jr.

NOTES

Re: Serial No. 09/917,998 filed July 30, 2001
Response to Office Action dated July 1, 2005

Dear Ms. McDonald:

Further to our telephone conversation, attached is a copy of the Response to the Office Action dated July 1, 2005. Please confirm receipt of this fax. Thank you.

Case No. 03630-P0049A WWW/tlm

Applicant: Marco Steiger

SN: 09/123,759

Filed 1998/07/27

Art Unit

For: Material Removing Tool

Receipt is hereby acknowledged of Response Transmittal and Petition for **Three Month** Time Extension, Response to Office Action of **July 1, 2005**, and Authorized Credit Card PTO-2038 Form in the amount of \$1020.00.

Mailed December 30, 2005

Commissioner
for Patents

Case No. 03630-P0049A WWW/tlm

Applicant: Marco Steiger

SN: 09/123,759

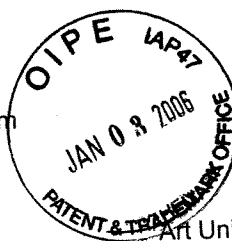
Filed 1998/07/27

For: Material Removing Tool

Receipt is hereby acknowledged of Response Transmittal and Petition for **Three Month** Time Extension, Response to Office Action of **July 1, 2005**, and Authorized Credit Card PTO-2038 Form in the amount of \$1020.00.

Mailed December 30, 2005

Commissioner
for Patents



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Marco Steiger
Application No. 09/123,759	Filing Date: July 27, 1998
Title of Application:	Material Removing Tool
Confirmation No.	Art Unit: 3723
Examiner	

MAIL STOP AMENDMENT
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

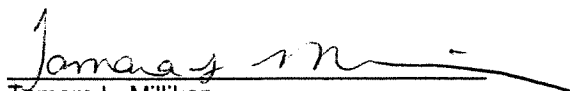
***Response Transmittal and
Petition For Time Extension (37 CFR 1.136[A])***

Dear Sir:

1. This is a petition for an extension of the time for a total period of three months to respond to the Office Letter mailed on July 1, 2005.
2. A response in connection with the matter for which this extension is requested is filed herewith.
3. Calculation of extension fee (37 CFR 1.17). \$1020.00 Extension Fee is due with this request.

Certificate of Mailing: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents; Post Office Box 1450; Alexandria, VA 22313-1450.

December 30, 2005


Tamara L. Millikan

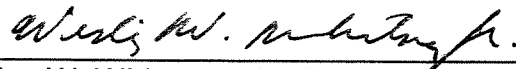
Page two
Serial No. 09/123,759
Time Extension Request

4. Fee Payment. Attached is a credit card form PT-2038 in the sum of \$1020.00.

The Commissioner is hereby authorized to charge any additional fees by this paper and during the entire pendency of this Application to Account No. 19-4516.

Respectfully submitted,

December 30, 2005



Wesley W. Whitmyer, Jr., Registration No. 33,558
Attorney for Applicant
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